IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3533 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KIRTIBHAI CHIMANLAL PAREKH - Petitioner(s)

Versus

MAMLATDAR VAV & 2 - Respondent(s)

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Appearance :

(MS KUSUM M SHAH) for Petitioner(s) : 1, 1.2.1,1.2.2 MR SUNIL K SHAH for Petitioner(s) : 1.2.1,1.2.2
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
M/S PATEL ADVOCATES for Respondent(s) : 3,

Mr. SONI, AGP for State

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 11/01/2007

ORAL JUDGMENT

1. The short facts of the case are that the petitioners were holding various agricultural lands and as per the petitioners, the exemption was already available prior to April, 1976 since the land was held by the petitioners as the Charitable Trust. It appears that on 1.4.1976 by Act 2 of 1974, Section 3(ddd) was added to Gujarat Agricultural Land Ceiling Act, 1960 (hereinafter referred to as “the Act”) which, inter alia, provided for application for exemption in the cases, where the exemption was already available immediately before the specified date. The aforesaid Amending Act came into force on 1.4.1976 and the petitioner Trust applied for exemption on 28.6.1976. The application was considered by the Dy. Collector and vide order dated 31.12.1981 the application was rejected on the ground that a separate Trust within a period of 90 days is not registered by the petitioner Trust as per the Scheme of Section 3(ddd) of the Act. The petitioner preferred appeal before the State Government, which ultimately as per the order dated

24.9.1989 came to be dismissed. Since the exemption was not available, the matter was further considered by the Mamlatdar in Ceiling Case No.1/1993 and the land admeasuring 186 acres and 36 gunthas was declared as surplus land. The petitioner preferred appeal being Appeal No.3/1993, which came to be dismissed on 30.11.1993. The petitioner carried the matter in revision being No.23/1994 and the said revision also came to be dismissed on 30.11.1993. It is under these circumstances, the petitioners have approached this Court by preferring the present petition.

2. I have heard Ms.Sushma S. Shah, learned Counsel for the petitioners and Mr.Soni, learned AGP for the State Authorities.

3. Ms.Shah, learned Counsel for the petitioners, raised the contention that Amending Act of 1976 is having perspective operation and not retrospective operation and, therefore, she submitted that the exemption, which was already

granted, would operate and, therefore, exemption would not be required. In support of her submission, she relied upon the decision of this Court in case of **"Shri Ranpur Khoda Dhor Panjarapole v. State of Gujarat & Ors.", reported 1995(1) GLR, 597** and she submitted that the application was not at all required to be made and in any case, the application was already made within a period of 90 days and, therefore, the decision of the authority of rejecting the application is illegal. She also submitted that the land is a waste land and there is no cultivation over the land and the grass is grown in normal course and as no cultivation is there, the land cannot be treated as agricultural land. She, therefore, submitted that the order passed by all the authorities declaring the land as the surplus land is illegal.

4. Mr.Soni, learned AGP has supported the order passed by the authorities.

5. The contention that Section 3(ddd) of the Act is not having retrospective operation, if examined, shows that the premise of the argument is ill-founded. Section 3(ddd) of the Act reads as under:-

> “3(ddd) lands being lands utilised for maintenance of *Panjrapole* or *Gaushala*, which were exempt from the provisions of this Act immediately before the specified date by reason of their being the property of an institution for public religious workship registered as a public trust under the Bombay Public Trust Act, 1950, provided such institution creates a separate trust in respect of such lands for the purposes of *Panjrapole* or *Gaushala* applies within a period of ninety days from the specified date, for the registration of such trust under the said Act, to the Deputy or Assistant Charity Commissioner having jurisdiction and endeavours to get such separate trust registered under the said Act

within a period of one year from the specified date;

6. Therefore, on the plain reading of Section 3(ddd), it transpires that the same is applicable to all the lands being lands utilised for maintenance of Panjrapole or Gaushala, which were exempted from the provisions of the Act immediately before the specified date and there is further requirement that if the benefit is to be taken, it would be required for such Trust (already in existence prior to the specified date) to create a separate Trust in respect of such lands for the purpose of panjrapole or gaushala and to apply within a period of 90 days from the specified date for registration of such Trust. Therefore, the scope and ambit of Clause (ddd) of Section 3 applies to the land for which exemption was already available to the extent of a particular area for which a separate Trust is to be registered as per the Scheme of Section 3(ddd) of the Act. The reliance placed upon the decision of this Court in the case of **“Shri**

Ranpur Khoda Dhor Panjarapole v. State of Gujarat & Ors.”(supra) contending that Clause 3(ddd) would not be applicable retrospectively is ill-founded inasmuch as in the said decision, the Court was concerned with Clause 3(1)(cc) and (dd) and not with Clause 3(ddd) in the said case. Not only that, but in the very decision, at para 15 this Court has observed as under:-

> “15....It is hereby declared that the petitioner continues to enjoy the exemption with respect to the lands held by it under Section 3(1)(d) of the Act prior to its amendment, subject to the restrictions contained in Section 3(1)(ddd) thereof...”

Hence, the said decision will not have any applicability to the land for which the exemption is already available prior to the specified date so far as formation of new Trust is concerned. Therefore, the said contention of Ms.Shah that Section 3(1)(ddd) cannot be applied retrospectively, is meritless.

7. It is not in dispute that the petitioner has not formed a separate Trust for the land in question, which is declared as surplus land and, therefore, in any case, the benefit under Section 3(1)(ddd) was not available to the petitioner even if the application was made within a period of 90 days from 1.4.976 and, therefore, the decision for rejection of the application under Section 3(ddd) cannot be said as illegal.

8. Even if the matter is considered on the basis that the benefits of Section 3(ddd) of the Act are not available to the petitioner Trust having rejected the application, the Tribunal has not examined the aspect qua the exemption already available to the petitioner Trust prior to 1.4.1976 in light of the decision of this Court in case of **"Shri Ranpur Khoda Dhor Panjarapole v. State of Gujarat & Ors."**(supra). If the exemption continues to apply in view of Section 3(dd), it would be required for the Tribunal to

consider as to whether any land could be said as holding for its declaration as surplus land as per the provisions of the Act. The perusal of the order passed by the Tribunal, shows that the Tribunal has proceeded on the basis that as no exemption was available in view of Section 3(ddd) of the Act, the land can be considered for the purpose of computation while conducting the ceiling case. Even the lower authorities have already proceeded on that basis. Therefore, it appears that since the aforesaid aspect is not considered by the Tribunal for the availability of the exemption to the petitioner Trust qua the agricultural land as per Section 3(dd) of the Act, the matter deserves to be remanded to the Tribunal for its reconsideration to that extent.

9. In the result, the prayer made by the petitioners for challenging the order passed by the Dy. Collector and its confirmation thereof by the State Government under Section 3(ddd) cannot be granted and hence, the petition shall

stand dismissed to that extent. However, qua the challenge to the order passed by the Tribunal is concerned, the impugned order of the Tribunal dated 30.11.1993 is quashed and set aside with the directions to the Tribunal to reconsider the matter in light of the observations made hereinabove and decide the same as early as possible, preferably within a period of six months from the date of receipt of the order of this Court.

10. The petition is partly allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

11.1.2007 **(Jayant Patel, J.)**

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